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Electronically
4/19/06

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9
 10 Counsel for Wells Fargo Bank of Nevada and Wells Fargo Bank

11 **UNITED STATES BANKRUPTCY COURT**

12 **DISTRICT OF NEVADA**

13 In re:) Bankruptcy No. BK-S-06-10725-LBR
 14) Chapter 11
 15)
 16 USA COMMERCIAL MORTGAGE) **Preliminary Hearing**
 17 COMPANY, fka USA CAPITAL,) DATE: April 17, 2006
 18) TIME: 1:30
 19) Debtor.)
 20) **Final Hearing**
 21) DATE: May 3, 2006
 22) TIME: 9:30 a.m.
 23)

24 **STIPULATION RE SETOFF AND BANK ACCOUNTS (WELLS FARGO)**

25 It is hereby stipulated by and between Debtor USA Commercial Mortgage Co. ("USA")
 26 and Creditor Wells Fargo Bank of Nevada and Wells Fargo Bank (collectively "Wells Fargo")
 27 that:

28 WHEREAS, Debtor is indebted to Wells Fargo for the following obligations (all
 29 amounts subject to final determination):

30 A. Revolving Line of Credit no 9191014299, aggregate principal balance of
 31 \$150,000; interest as of April 14, 2006 in the approximate amount of \$730.21;
 32 interest currently accruing at the rate of \$40.6250 per diem.

1 B. Revolving Line of Credit no. 5474648801324908, with a credit balance of
2 \$363.45

3 C. Credit card no. 4856200300092049, amount due on account of charges processed
4 through April 14, 2006 of \$143.19, plus additional interest, charges, and items in
5 transit

6 D. Credit card no. 4856200309027624, amount due on account of charges processed
7 through April 14, 2006 of \$55.00, plus additional interest, charges, and items in
8 transit.

9 E. Credit card no 4856200309016650, amount due on account of charges processed
10 through April 14, 2006 of \$840.57, plus additional interest, charges, and items in
11 transit.

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WHEREAS, Debtor has the following bank accounts with Wells Fargo (collectively the "DDA Accounts":

Account no. 083-4610149 (Choice IV Commercial Checking Account);

Account no. 562-7688186 (Basic Business Checking Account);

Account no. 0895737864 (Collections Trust Account);

Account no. 0486-5657146 (Investors Trust Account);

Account no. 562-7688020 (Discretionary); and

REAS. Debtor's Choice JV Commercial Checkin

WHEREAS, Debtor's Choice IV Commercial Checking Account has had a balance in excess of \$480,000 at all times in the last ninety days; and

WHEREAS, Wells Fargo is entitled to setoff of amounts owed by the Debtor against the balance in the DDA Accounts; and

1 WHEREAS, Thomas Allison has been appointed by the Court as the Chief
2 Restructuring Officer of the Debtor; and

3 WHEREAS, the parties believe it is in the best interest of the parties and the estate to
4 permit the immediate exercise of such setoff rights, in order to avoid additional interest accruals
5 and attorneys' fees, which would themselves be the subject of a request for setoff:

6 NOW, THEREFORE, IT IS AGREED AND STIPULATED THAT:

7 1. Immediately upon approval of this Stipulation, Wells Fargo may exercise setoff
8 rights against the DDA Accounts for all amounts owed by Debtor to Wells Fargo as discussed
9 herein

11 2. Debtor shall forthwith serve a copy of this Stipulation and the Court's order
12 substantially in the form attached hereto as Exhibit "1" on all parties required to receive notice
13 pursuant to FED R. BANKR. P. Rule 4001; and

15 3. Such notice will be in substantially the form as set forth in Exhibit "2" hereto

16 4. Wells Fargo shall permit Mr. Allison to direct the disposition of remaining funds
17 in the DDA Accounts, and Wells Fargo shall not incur any liability for release of funds pursuant
18 to the directions of Mr. Allison or his designated signatory or representative (or any of them);
19 however, any rights which Wells Fargo would be entitled to assert as to such funds shall be
20 preserved as to such funds.

22 5. Except as otherwise provided herein, this Stipulation shall not alter or waive any

1 right of any party, including as to final determination of amounts owed.
2

3 DATED this 18th day of April, 2006.
4

5 SCHWARTZER & MCPHERSON
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8 LENARD E. SCHWARTZER, ESQ.
9 2850 S. Jones Boulevard, Suite 1
10 Las Vegas, NV 89146
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12 and
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14 RAY QUINNEY & NEBEKER
15 ANNETTE W. JARVIS, ESQ.
16 36 South State Street, Suite 1400
17 Salt Lake City, UT 84111
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SHEA & CARLYON, LTD.


CANDACE C. CARLYON, ESQ.
233 S. Fourth Street, Second Floor
Las Vegas, NV 89101

EXHIBIT “1”

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5
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12 Counsel for Wells Fargo Bank of Nevada and Wells Fargo Bank

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ORDER RE STIPULATION RE SETOFF AND BANK ACCOUNTS (WELLS FARGO)

24 The Court having considered the Stipulation re Setoff (Wells Fargo) filed by the Debtor
25 and Wells Fargo Bank of Nevada, and the Court finding that approval of the Stipulation is
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1 essential for the Debtor's continued operation; and that Notice as set forth below is appropriate
2 and adequate under the circumstances of this case, and good cause appearing:

3 IT IS HEREBY ORDERED that the Stipulation is approved on an interim basis,
4 effective April 17, 2006, and the parties may rely upon the same pending the final hearing.

5 IT IS FURTHER ORDERED that the Debtor shall forthwith send the notice as required
6 by Paragraphs 2 and 3 of the Stipulation and FED. R. BANKR. P. Rule 4001(d). In the event that
7 no timely objections are filed on or before May 2, 2006, this Order shall become final. If such
8 objections are filed, a continued hearing shall be held on the 3rd day of May, 2006 at 9:30 a.m.
9

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11 SUBMITTED BY:

12 SHEA & CARLYON, LTD.

13

14

15 CANDACE C. CARLYON, ESQ.
16 Nevada Bar No. 002666
17 233 S. Fourth Street, Second Floor
Las Vegas, NV 89101

18 APPROVED:

19 SCHWARTZER & MCPHERSON

20

21

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24 RAY QUINNEY & NEBEKER
25 ANNETTE W. JARVIS, ESQ.
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Salt Lake City, UT 84111

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1 APPROVED:
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OFFICE OF THE U.S. TRUSTEE

Brian AUST
AUGUST B. LANDIS, ESQ.
300 Las Vegas Blvd. S., #4300
Las Vegas, NV 89101

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EXHIBIT "2"

1 SCHWARTZER & MCPHERSON LAW FIRM
2 LENARD E SCHWARTZER, ESQ.
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4 2850 S. Jones Blvd., Suite 1
5 Las Vegas, NV 89146
6 Telephone: (702) 228-7590
7 Facsimile: (702) 892-0122

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13 Telephone: (801) 532-1500

14 **UNITED STATES BANKRUPTCY COURT**

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26 **NOTICE OF STIPULATION RE SETOFF AND BANK ACCOUNTS(WELLS FARGO)**

27 TO: Creditors requiring special notice, including any committee appointed pursuant
28 to §1102 of the code or its authorized agent, and if no committee of unsecured creditors has
been appointed pursuant to §1102, upon the creditors including the list filed pursuant to Rule
1007(d).

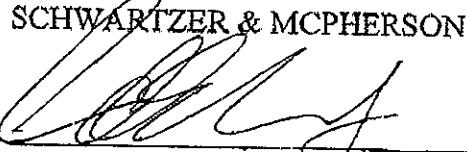
29 PLEASE TAKE NOTICE that on April 18, 2006, Debtor entered into a Stipulation re
30 Setoff (Wells Fargo) (the "Stipulation") a copy of which is attached hereto. The Stipulation
31 permits Wells Fargo to exercise its right of setoff as to amounts due by the Debtor (preliminary

1 asserted to be approximately \$151,405.52, plus interest, fees and charges, but subject to final
2 investigation and determination) against the Debtor's deposit accounts held with Wells Fargo.

3 PLEASE TAKE FURTHER NOTICE that any objection to the Stipulation must be filed
4 and served on the undersigned no later than May 2, 2006

5 PLEASE TAKE FURTHER NOTICE that, in the event such objections are timely filed,
6 a hearing on the Stipulation will be held on the 3rd day of May, 2006 at 9:30 a.m., before the
7 United States Bankruptcy Court, District of Nevada, 300 Las Vegas Blvd. S., Third Floor, Las
8 Vegas, NV 89101.

10 DATED this 18th day of April, 2006.

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